

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

HUGH SKERKER,

Plaintiff,

v.

**1:05-CV-978
(GLS)**

THE TOWN OF COLONIE *et. al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

Tobin, Dempf Law Firm
33 Elk Street
Albany, New York 12207

Kevin A. Louibrand, Esq.

FOR THE DEFENDANTS:

Maynard, O'Connor Law Firm
6 Tower Place
Albany, New York 12203

Edwin J. Tobin, Jr., Esq.

**Gary L. Sharpe
U.S. District Judge**

Order to Show Cause

On August 3, 2005, Hugh Skerker, through his attorney, Kevin A. Luibrand, Esq., filed a civil rights action against the Town of Colonie *et. al.*

(collectively, “Colonie”). See *Dkt. No. 1*. On November 4, Colonie filed a motion for judgment on the pleadings and, alternatively, for summary judgment. See *Dkt. No. 10*. Colonie’s motion was improperly docketed before Magistrate Judge Homer, an error that was corrected by Text Notice served on November 8, 2005. See *Min. Entry, Nov. 8, 2005*. The Notice reset the motion before this court, and set the return date for December 15, 2005. *Id.* As relevant, the notice provided: “Oral argument is required unless otherwise notified by the court.” *Id.* The Notice parroted the local rule which provides: “[T]he parties shall appear for oral argument on the scheduled return date of the motion.” See L.R. 7.1(h).

On December 6, 2005, a Text Notice reset the motion return for February 2, 2006, and reiterated the requirement that the parties’ attorneys appear for oral argument. See *Min. Entry, Dec. 6, 2005*. On December 8, Mr. Luibrand wrote Judge Homer asking that a Rule 16 conference be conducted as scheduled, and informed Judge Homer that the return on the dispositive motion was scheduled for February 2. See *Luibrand Ltr., Dkt. No. 17*.

On February 2, 2006, Laura Sprague, Esq., appeared on behalf of Colonie for oral argument. On behalf of Skerker, Mr. Luibrand failed to

appear.

As pertinent, Local Rule 7.1(i) provides: "A party who ... fails to comply with this Rule is subject to discipline as the Court deems appropriate, including sanctions and the imposition of costs and attorneys' fees to opposing counsel." As with all federal rules, local rules are enforceable, and the failure to abide by them is sanctionable. See *Carmona v. Wright*, --- F. Supp.2d --- , 2006 WL 172340, *5 (N.D.N.Y. Jan. 25, 2006) (citing *LoSacco v. City of Middletown*, 71 F.3d 88, 92 (2d Cir. 1995); *Whitfield v. Scully*, 241 F.3d 264, 270 (2d Cir. 2001); FED. R. CIV. P. 83(a)(b)). Naturally, whether to sanction and, if so, the appropriate sanction, are matters left to sound judicial discretion, as tempered by the demands of justice. See *Carmona*, 2006 WL 172340,*5. Furthermore, the offending party should always receive notice that sanctions are under consideration, and should have an opportunity to be heard.

Accordingly, and for the reasons stated, it is hereby

ORDERED that Kevin A. Luibrand, Esq., shall file an affidavit with the court on or before **FEBRUARY 12, 2006**, explaining his failure to appear for oral argument on February 2, 2006, and reciting any other factors he deems pertinent to whether this court should impose sanctions, and if so,

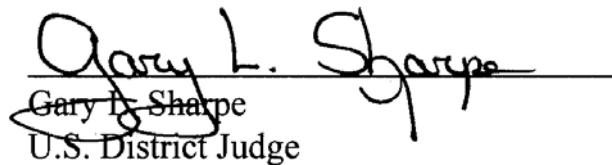
an appropriate sanction; and it is further

ORDERED that the Maynard, O'Connor Law firm shall reply, to the extent it deems appropriate, on or before **February 19, 2006**; and it is further

NOTICED that after the court has reviewed Mr. Luibrand's affidavit and any reply filed, it will either issue an order or advise the parties of what proceedings are further necessitated.

SO ORDERED.

Date: February 2, 2006
Albany, New York



Gary L. Sharpe
U.S. District Judge